

**No. 01-20-00004-CR & No. 01-20-00005-CR**

In the Court of Appeals for the  
First District of Texas at Houston

FILED IN  
1st COURT OF APPEALS  
HOUSTON, TEXAS  
3/19/2020 8:43:22 PM  
CHRISTOPHER A. PRINE  
Clerk

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**Ex parte**

**JOSEPH ERIC GOMEZ,**  
Applicant

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On Appeal from Trial Court Case No. 1657519 and 1657521  
Before the 338th Judicial District Court of Harris County, Texas

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**APPLICANT'S MOTION FOR BOND  
PENDING RESOLUTION OF APPEAL**

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**TO THE HONORABLE COURT OF APPEALS:**

Comes now Joseph Eric Gomez, Applicant, by and through undersigned counsel, and moves this Court to release him on a personal bond pending the resolution of this appeal and, in support thereof, would show the following:

1. Presently pending before this Court is Applicant's appeal from the trial court's denial of his application for writ of habeas corpus

seeking to reinstate the \$35,000.00 surety bonds posted by him to secure his release after his arrest for two felony charges. Applicant maintains that the trial court erred in revoking those bonds without good and sufficient cause and, by failing to afford his due process in doing so. *See generally* Applicant's Brief. The case is currently set for submission before this Court on March 31, 2020.

2. Joseph Gomez is still presently being held in the Harris County Jail and has been for 125 days.
3. This Court is obviously aware of recent developments regarding the novel coronavirus that causes COVID-19. As is being publicized, the threat of this disease infecting individuals inside a confined space like a county jail puts those like Applicant at a greater risk of contracting the virus.<sup>1</sup>

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<sup>1</sup> Harris County Sheriff, Ed Gonzales stated yesterday, "I am concerned for my staff and those under my care. Standards we implement in the general community are either impossible to follow or hard to do in a jail setting" and that "As proactive as I've been, an outbreak in our jail would spread like wildfire. An outbreak in our jail, could potentially overwhelm our local health system." *See* "Harris County Sheriff Suggests Releasing Inmates to Reduce the Spread of Coronavirus at County Jails" located at <https://www.click2houston.com/news/local/2020/03/19/harris-county-sheriff-suggests-releasing-inmates-to-reduce-the-spread-of-coronavirus-at-county-jails/>

4. Yesterday (March 18, 2020), undersigned counsel requested and held a telephone conference with the Honorable Ramona Franklin, Presiding Judge for the 338th Judicial District Court, along with an attorney for the State. In that conference, counsel requested, in light of these circumstances, that the trial court reconsider its decision to revoke Applicant's bond and to reinstate the original bonds posted. The trial court denied that request but stated that it would consider reducing the current, total bond amount of \$150,000.00.

Unfortunately, Applicant nor his family have the resources to post any new surety bond. They are, in fact, still making payments to the bonding company for posting the *original* surety bonds to initially secure Applicant's release. The difficulty in posting a new bond is compounded by the fact that both of Applicant's parents are now out of work due to business closures resulting from the coronavirus.

5. This Court undoubtedly has a significant legal issue before it in this case that requires due consideration. Applicant is confident that this Court will seek to do "substantial justice" to the parties

at the “earliest practicable time.” *See* TEX. R. APP. P. 31.1 & 31.2. Given the unique circumstances that our society and community is presently faced with, however, every day that passes is another day that increases the risk of imminent danger to Applicant’s life. While the legal issue before the Court needs to be resolved, Applicant — an individual who is presumed innocent — should not have to risk his life while this Court takes the necessary time to consider and rule in this matter.

6. Article 11.32, Texas Code of Criminal Procedure provides that when a person is brought before a court for consideration of a habeas corpus, “He may be bailed from day to day, or be remanded to the same jail whence he came, or to any other place of safekeeping under the control of the judge or court, till the case is finally determined.” TEX. CODE CRIM. PROC. art. 11.32 (West Supp. 2019); *see also Ex parte Reposa*, 541 S.W.3d 186, 192 (Tex. Crim. App. 2017)(Alcala, J., dissenting)(“this Court has the authority to release a person who has pending habeas proceedings before it”) citing *Ex parte Eureste*, 725 S.W.2d 214, 216 (Tex. Crim. App. 1986).

7. Because of massive closures, Applicant has nowhere else to go but to his parent's home where he can be in a safe environment where his exposure to the virus is limited. He is not a flight risk nor a danger to the community. He previously completed a two-year pretrial intervention agreement with the State for a charge of possession of a controlled substance, wherein he complied with several conditions, ultimately resulting in the dismissal of that charge against him. *See* attached Exhibit A (a copy of the pretrial intervention agreement) and attached Exhibit B (a certified copy of the motion and order to dismiss upon completion of that pretrial intervention agreement). Applicant is willing to abide by a condition of his release that he remain within his parent's home until further order of this Court and resolution of this appeal.

WHEREFORE, PREMISES CONSIDERED, Applicant moves this Court to issue an order to the Sheriff of Harris County to release Applicant on a personal bond in the amount of \$50,000.00 with the condition that he is to reside and remain within his parent's home to be supervised by the Harris County Pretrial Services department.

Respectfully Submitted,

MAYR LAW, P.C.

by: /s/ T. Brent Mayr

T. Brent Mayr

SBN 24037052

bmayr@mayr-law.com

by: /s/ Sierra Tabone

Sierra Tabone

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SCHNEIDER & MCKINNEY, PLLC

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713-224-6008 FAX

stans12@aol.com

ATTORNEYS FOR  
JOSEPH ERIC GOMEZ

### **CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing instrument has been served on to the attorney for the State, Clint Morgan, Harris County District Attorney's Office, pursuant to Texas Rule of Appellate Procedure 9.5 (b)(1), through Appellant's counsel's electronic filing manager on March 19, 2020.

/s/ T. Brent Mayr

T. Brent Mayr

ATTORNEY FOR

JOSEPH ERIC GOMEZ

EXHIBIT A

Certified Copy of  
Motion and Agreement for Pre-Trial Intervention

*State of Texas v. Joseph Gomez*  
Case No. 155674 in the 183rd Judicial District Court of Harris County,  
Texas



4/9981ca  
DLO

THE STATE OF TEXAS                      §                      IN THE 183rd DISTRICT COURT  
 VS.    §                      OF  
 JOSEPH GOMEZ                              §                      HARRIS COUNTY, TEXAS

**FILED**  
 Chris Daniel  
 District Clerk

Time: NOV 06 2017

By \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Harris County, Texas

### **MOTION AND AGREEMENT FOR PRE-TRIAL INTERVENTION**

This agreement for participation in a pre-trial Intervention program is entered into on this date, by **JOSEPH GOMEZ**, the Defendant in the above-styled and numbered cause, and the State of Texas, by and through the undersigned Assistant District Attorney.

The Defendant makes the following representations and agrees to the following terms:

My name is **JOSEPH GOMEZ**, my date of birth is **July 13, 1992**; this is my true and correct name and I have never been known by any other name. My current home address is 1413 George St., Pasadena, Texas 77502.

I am charged with the FELONY offense of **PCS (2<sup>nd</sup> Degree)**, in the above-styled and numbered cause. I have never been charged or convicted with an offense, other than a minor traffic offense or those offenses required as elements of the instant offense and have never been granted probation except as relates to those offense required as an element of this offense, and I have never been previously placed in any type of intervention program, in this or any other jurisdiction. I have been placed on Deferred Adjudication before, and I successfully completed it.

#### **Paragraph I: Reporting**

I will report to the Harris County Community Corrections and Supervision Department (hereinafter called the "Department") today, **November 6, 2017**, and on the 6th day of each and every month thereafter, unless otherwise directed in writing by the Department or by the Court, until **November 6, 2019**.

I will appear in this court as directed by the Court or by the Department. Notice of my appearance date may be mailed to me at the above home address unless I have given written notice of a new home address to the Department, in which event written notice to the new address shall be sufficient. If I do not appear in this court as directed I understand a warrant will be issued for my arrest.

#### **Paragraph II: Fees & Fines**

I agree to pay fees as directed by the Court or by the Department including:

- 1) A supervisory fee of \$60.00 per month to cover the cost of my participation in the

Intervention program for the duration of my community supervision under this agreement beginning today,

- 2) A monthly fee of \$20.00 for random urinalysis to the Department, and
- 3) A one-time fee of \$12.50 to the Department for the issuance of a Department identification card.

**I agree to pay a fine as directed by the Court or by the Department of: \$500 fine**

### **Paragraph III: Drug/Alcohol Evaluation, Treatment and Related Conditions**

I will not consume, use or possess any alcohol, controlled substances, dangerous drugs, marijuana or prescription drugs not specifically prescribed to me by lawful prescription nor reside in a location where another individual consumes, uses or possesses any alcohol, controlled substances, dangerous drugs, marijuana or prescription drugs not specifically prescribed by lawful prescription.

I will submit to drug/alcohol analysis once a month or at any other time as requested by authorized personnel of the Department, including any department having courtesy supervision; and I will provide proof of any medication legally prescribed to me prior to submitting a specimen.

**I will participate in the Intensive Outpatient Substance Abuse Treatment (IOP) as directed by the Department.**

I will submit to an alcohol/drug evaluation today or anytime thereafter as directed by the Department and I will attend treatment and aftercare as recommended or as designated by the Court. I will comply with all program rules, regulations and guidelines until I am successfully discharged or released by further order of the Court. On each reporting date, I will submit written verification of my enrollment, attendance and/or successful completion of the program, if any, to the community supervision officer, to be retained in the Department's file.

### **Paragraph IV: Residence, Travel, and Employment/School**

During the term of this Pre-Trial Intervention Agreement, I will not change my home address without first giving written notice to the Department within five days of any such change.

I will not travel outside of Harris County, TX, without first obtaining the permission of the Court and the Department.

I will provide proof of work or school to the Department.

### **Paragraph V: Other Provisions**

I agree that I will not violate the laws of this State, any other state, the United States, or any political subdivision of these jurisdictions during this Intervention period. I agree that should any such

violation occur this agreement is immediately void and without force and effect.

I agree that I will perform **150 hours** of Community Service at a rate of at least 8 hours per month, and will provide proof of this to the Department.

**I agree to not have contact with the following individuals: Garrett Gruetzner, Douglas McCoy, and Mark Rodriguez.**

Based upon the above representations by the Defendant herein, the State of Texas and the Defendant herein, hereinafter called the "parties", now enter into the following agreement:

That if the Defendant does not satisfactorily participate and complete all the terms and conditions of this agreement that this agreement is void and the above styled and numbered cause will be scheduled on this court's docket as if there had been no Intervention agreement.

The Defendant has no right to participate in the Pre-Trial Intervention program, and the ability of the Defendant to resolve the above-styled and numbered cause through participation in the program is in the sole, unreviewable discretion of the District Attorney.

The Defendant's participation in the Pre-Trial Intervention program may be terminated by the District Attorney for any reason and that any such termination is not subject to judicial or administrative review. Further, the determination of whether the Defendant violated any of the terms or conditions of the Pre-Trial Intervention program is to be made solely by the District Attorney, and is not subject to judicial or administrative review.

In the event the Defendant's participation in the Pre-Trial Intervention program is terminated, the above-styled and numbered cause will be scheduled on this court's docket as if there had been no Intervention agreement.

The Defendant acknowledges that she may not be eligible for an expunction upon the completion of this agreement and the dismissal of this case. The Defendant agrees that this case will be controlled by the terms of the Code of Criminal Procedure, article 55.01, and, if under the terms of that statute, she is eligible for expunction, she will not seek expungement of his criminal record for two years from the date that she successfully completes this Pre-Trial Intervention and the case is dismissed from the docket of this court. The Defendant further agrees that the scope of any expunction order must be limited to permit the Harris County District Attorney's Office and the Department to retain the records related to her arrest, including all records related to her participation in this Pre-Trial Intervention program, and to use any such retained information for any purpose in any subsequent criminal prosecution against the Defendant or for any other legal purpose.

The State of Texas agrees that if the Defendant successfully completes the terms and conditions of this agreement to the satisfaction of the District Attorney, the Harris County District Attorney's Office will move to dismiss the above-styled and numbered cause.


I, **JOSEPH GOMEZ**, the Defendant herein, have read this agreement in its entirety and hereby

swear it is true and correct and represents the total agreement between the State of Texas and me.

  
\_\_\_\_\_  
**JOSEPH GOMEZ**

1413 George St.  
Pasadena, Texas 77502  
Phone: 832-596-6022

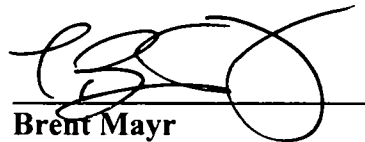
SUBSCRIBED AND SWORN TO before me this 6th day of November, 2017.

  
\_\_\_\_\_  
Deputy District Clerk,

183rd District Court  
Harris County, Texas

**REPRESENTATION OF DEFENSE COUNSEL:**

I certify that I represent the Defendant, **JOSEPH GOMEZ**, in the above-styled and numbered cause. I have advised and counseled my client concerning the terms and conditions of the foregoing Pre-Trial Intervention Agreement, and my client understands all the terms and conditions, and my client is entering into this agreement freely, knowingly and intelligently.

  
\_\_\_\_\_  
**Brent Mayr**

**5300 Memorial Dr. Suite 750  
Houston, Texas 77007**

Agreed to, and approved by, **Celeste Byrom**, Assistant District Attorney for Harris County, Texas.

  
\_\_\_\_\_  
Assistant District Attorney

Harris County, Texas

THE STATE OF TEXAS                      §                      IN THE 183rd DISTRICT COURT  
VS.    §                      OF  
JOSEPH GOMEZ                              §                      HARRIS COUNTY, T E X A S

**MOTION AND AGREEMENT FOR PRE-TRIAL INTERVENTION**  
**TEXAS RULE OF EVIDENCE 410(4) LIMITED WAIVER**

COMES NOW Defendant in the above-styled case who hereby freely and voluntarily makes the following Texas Rule of Evidence 410(4) waiver pursuant to *United States v. Mezzanatto*, 513 U.S. 196 (1995):

Defendant does not generally waive Texas Rule of Evidence 410(4). Generally, any statement made by Defendant pursuant to an application for Pre-Trial Intervention in the above styled case is a statement as part of plea negotiations as contemplated by Texas Rule of Evidence 410(4) and as such shall not be admissible at trial of the above styled case.

However, the Defendant hereby waives any Texas Rule of Evidence 410(4) protection of any statement made by Defendant as part of an application for Pre-Trial Intervention in the above-styled case in the event the Defendant testifies at trial and testifies inconsistently with any statement of Defendant made in the Pre-Trial Intervention application. In such a case, the Defendant waives Texas Rule of Evidence 410(4) and consents to any statement of the Defendant from the Pre-Trial Intervention application being used to impeach the Defendant at trial.

**FILED**

Chris Daniel  
District Clerk

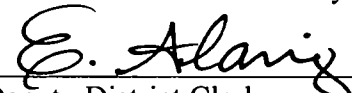
NOV 06 2017

  
JOSEPH GOMEZ


Time: \_\_\_\_\_  
Harris County, Texas

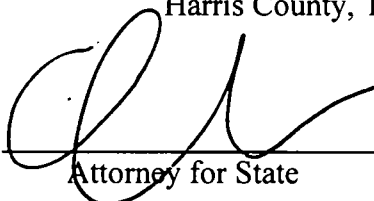
Subscribed and sworn to before me this 6th day of November, 2017.

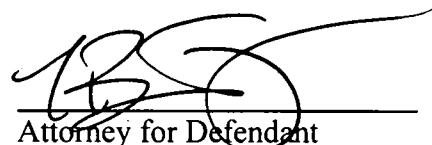
By \_\_\_\_\_  
Deputy

  
Deputy District Clerk  
183rd District Court  
Harris County, Texas

Approved:

  
Presiding Judge

  
Attorney for State

  
Attorney for Defendant

202

§

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I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this March 19, 2020

Certified Document Number: 77360125 Total Pages: 6

Marilyn Burgess, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

**In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)**

EXHIBIT B

Certified Copy of  
Motion to Dismiss and Order

*State of Texas v. Joseph Gomez*

Case No. 155674 in the 183rd Judicial District Court of Harris County,  
Texas



CAUSE NO. 155567401010

THE STATE OF TEXAS

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§  
§  
§  
§

IN THE 183RD DISTRICT COURT

VS.

OF

GOMEZ, JOSEPH ERIC

HARRIS COUNTY, TEXAS

OFFENSE: POSS CS PG 2 4G - 400G

**MOTION TO DISMISS**

The State respectfully requests the Court to dismiss the above entitled and numbered criminal action for the following reason(s):

- ☐ Case refiled as Cause No. .
- ☐ Defendant was convicted in another case: Cause No. .
- ☐ Missing witness.
- ☐ Request of complaining witness.
- ☐ Dispositive motion granted.
- ☐ Probable cause exists, but case cannot be proven beyond a reasonable doubt at this time.
- ☐ In custody elsewhere – will not be extradited to Harris County.
- ☐ Due to passage of time, defendant not likely to be located or, if arrested, successfully prosecuted.
- ☐ No probable cause exists at this time to believe the defendant committed the offense.
- ☒ Other (explanation required)

EXPLANATION: Defendant successfully completed PTI per CLO.

WHEREFORE, PREMISES CONSIDERED, it is requested that the above entitled and numbered cause be dismissed.

Respectfully submitted,



ZIMMER, SEPINOOD  
Assistant District Attorney  
Harris County District Attorney's Office  
TBC No. 24100440  
ZIMMER\_SEPI@DAO.HCTX.NET

**ORDER AND NOTICE**

The foregoing motion having been presented to me on this the November 6, 2019, and the same having been considered, it is, therefore, ORDERED, ADJUDGED and DECREED that said above entitled and numbered cause be and the same is hereby dismissed.

NOTICE: Pursuant to Article 38.50(d) of the Code of Criminal Procedure, the Court is notifying you that any toxicological evidence collected in your case pursuant to an investigation or prosecution of an offense under Chapter 49 of the Penal Code does not have to be retained or preserved and may be destroyed pursuant to the authority of Article 38.50(c)(3) and (e) if your indictment or information has been dismissed with prejudice.

SIGNED AND ENTERED on November 6, 2019.



Judge Presiding  
Harris County 183rd District Court  
Harris County, Texas



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this March 19, 2020

Certified Document Number: 87955240 Total Pages: 1

Marilyn Burgess, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

**In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)**

### **Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Thomas Mayr  
Bar No. 24037052  
bmayr@mayr-law.com  
Envelope ID: 41807994  
Status as of 03/20/2020 07:45:25 AM -05:00

Associated Case Party: Joseph Gomez

Name	BarNumber	Email	TimestampSubmitted	Status
Stanley G. Schneider	17790500	stans3112@aol.com	3/19/2020 8:43:22 PM	SENT
Sierra Tabone	24095963	stabone@mayr-law.com	3/19/2020 8:43:22 PM	SENT

Associated Case Party: State of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Clint Morgan		morgan_clinton@dao.hctx.net	3/19/2020 8:43:22 PM	SENT